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ABSTRACT

In spite of apparent successes, it remains questionable whether communications reform groups have had significant impact on public policy toward broadcasting and its role in American society. Historically, the progressive movement and the rise of government regulatory apparatus underlie the communications reform movement. But the effectiveness of progressivism was undermined by the inherent contradictions of its own assumptions, and regulatory action has been constrained by the commitment to an essentially private, commercial, network-oriented industry. An examination of the licensing authority of the Federal Communications Commission (FCC) reveals both increasing success for reformers in the 1960's and 1970's and strong countervailing trends that are dangerous to the reform agenda. In a decade-long policy review process, major affected industries seem to be emerging relatively unscathed, with the reform movement losing the most ground on several major issues, including questions concerning cable television and the power of regulatory agencies to regulate. The reform movement needs to see itself more clearly to become effective and to prevent itself from being an instrument of the institutions it is attempting to change. (JL)

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WILLARD D. ROWLAND JR.

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WILLARD D. ROWLAND JR.

The Illusion of Fulfillment: The Broadcast Reform Movement

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WILLARD D. ROWLAND JR. is Assistant Professor of Communications in the Institute of Communications Research, University of Illinois, Urbana-Champaign. He holds a B.A. in history from Stanford University, an M.A. from the Annenberg School of Communications at the University of Pennsylvania, and a Ph.D. from the University of Illinois. Between periods of study and teaching he has served as a Peace Corps Volunteer in instructional broadcasting in Jamaica, the first research coordinator for the Public Broadcasting Service in Washington, D.C. and later as Director of the Long Range Planning Project for PBS.

IT IS SAID that the generals and admirals are always well prepared to fight a war——the previous one. So it may have been with the leaders of the reform movement in American broadcasting by the late 1970s. Preparations had been made for battles with the established broadcast industry and the federal communications policymakers. Substantial agendas for change had been drawn up and pursued. Yet a careful analysis of the overall trends in public policy for broadcasting and telecommunications suggests that, like the generals, the reform movement may have been preparing for a war that had already been decided.

On the surface the impact of the reformers had been substantial. Students of the regulatory process and of the efforts of "citizens" or "public interest" groups, and even some of the participants themselves, have begun to chronicle this impact. A commonly cited study of the dynamics of broadcasting regulation makes much of the arrival to prominence in regulatory matters of such public groups. [1] The authors note that the old triangle among the broadcast industry, the Federal Communications Commission (FCC) and the Congress has been joined, restructured and made more complex during the last decade or two by agencies of the executive branch, by the courts and by the public groups. The interaction of the latter two has been of crucial importance to whatever success the reformers have achieved. A study by Branscomb and Savage of the goals, resources and operations of the leading media reform groups demonstrates the range of regulatory activity they have pursued. [2] Guimary's book on the history of citizen's group activity shows how, as an institution, the reform movement developed a certain structural division of labor involving various forms of local and national voluntary organization, as well as several other national-level, non-profit legal assistance and expert consulting centers. [3] Grundfest traces the history of citizen participation in licensing activity and reviews FCC policies in that area through the mid-1970s. [4] The Murphy study, while not dealing with communications reform, establishes the context of

changes taking place during the 1960s in state and local government, public interest group, corporate and other lobby efforts aimed at Congress and the federal government. [5]

It remains questionable, however, whether the institutional presence and status achieved by the communications reform groups have, in fact, had significant impact on the deep structure of public policy toward broadcasting and its role in American society. Indeed it might be argued that even well before the 1980 elections the major trends in telecommunications policy were beginning to respond to economic and ideological forces at odds with the primary elements of the reform agenda. Further, it may be seen that the policymaking process, of which the reform activity had become a part, was itself a ritualistic exercise, implying little significant change.

For a while there was relatively little awareness of the failures in reform implicit here. One of the first formal recognitions of the emerging difficulties came at a 1976 "Conference on Public-Interest Communications Law" sponsored by the Aspen Institute. The report from that conference claims a certain historical and institutional status for the media reform movement, but it also reflects concern about the apparent slowing of litigation success and uncertainties within the movement about priorities and appropriate strategies. [6] By the end of the decade, at least one set of writers, appearing in a book edited by Haight, seemed to have awakened to further aspects of what had been happening. [7] Several studies in this book, many written by activists in the broadcast reform movement (some in the academy, some not), give ample evidence of the losses suffered by the reform groups in the process of developing the terms, compromises and "trade-offs" in the initial, 1978-79, portion of the effort to "rewrite" the Communications Act of 1934. The Haight review concludes with the observation: "It looks like it's time to . . . paint the picket signs again. We have been politely doing the work of legitimizing the policy-formation process for too long." [8]

Yet the level of awareness reached here is still preliminary and needs to be pursued. The Haight collection provides a long overdue reflection on aspects of the compromised reform work, but it and most other critiques of federal communications policy tend to perceive whatever problems there are as susceptible to better organized, more vigorous reform activity. What they apparently do not see, and what has been observed nowhere else in recent telecommunications policy debate, is the essentially symbolic nature of the process and the long history of reform participation in the ritual. They tend not to be aware that the contradictory experience of contemporary reform, not only in communications, but also in all other social matters, is not a unique or passing phenomenon, that in-

stead it is a part of a continuing set of paradoxes and inconsistencies that, as suggested by David W. Noble, have bedevilled progressivist thought and action throughout American history. [9]

The other sources noted above, even those less closely tied to the reform movement, share the same difficulty in looking beyond the immediate details of the relevant cases and the broadcasting reform movement's structural history. Krasnow and Longley provide a useful analytic framework and a number of compelling case studies to show the institutional workings of the regulatory process. Branscomb and Savage reveal much about the range of reform activity and a sense of which organizations are the major players, e.g., American Council for Better Broadcasts (ACBB), Action for Children's Television (ACT), Citizens Communication Center (CCC), National Citizens Committee for Broadcasting (NCCB) and the Office of Communications of the United Church of Christ (UCC), among others. The study reveals the funding and staffing problems of the smaller of these groups and the ties of the larger groups to funding foundations. Guimary provides a bit more historical and analytic background, describing the various categories of organized activity, relating in case-study fashion the origins and successes of such groups as ACT and CCC, and showing the differences between these organizations and the earlier industry-sponsored listener and advisory councils. Grundfest recommends adjustments in FCC licensing policy that would balance the interests of citizen groups and broadcasters. Like the Schneyer and Lloyd report and the Haight collection, all of these tend to take the broadcast reform movement at face value, to treat it as part of a rationalized, logically coherent, systemic policymaking procedure. The symbolic dimension of the process, the significance of broadcast reform as part of an overall political legitimization——of ratification of prior structural arrangements and power allocations——is only occasionally acknowledged. And none of them establishes the broadcast reform effort in the broader context of American history, especially that rich portion centered around the problems of general social, economic and political reform.

To suggest why it might be appropriate to reinterpret the state of affairs in broadcasting reform, it is necessary to pull together and recast certain aspects of the nature and extent of the recent reform experience in broadcasting regulatory and policy matters. Accordingly, this study attempts to review elements of the major advances of the reform movement into broadcasting regulation and policymaking activity and to take note of certain important countervailing trends. The study also seeks to relate this experience to aspects of the broader heritage of reform in American history. Throughout, a further purpose of this work is to draw attention to the usefulness of examining media policy issues in light of a

jointly critical and symbolic approach — that is, to review official, public policy developments in communication in relationship to problems of pragmatic compromise with industrial and political forces and to underlying structures of myth about the nature and meaning of media in modern society.

The Heritage of American Reform

The origins of political reform in the United States rest in the Constitution and the experience of the American rebellion itself. The rights to freedom of speech and to petition for redress of grievances imply more than the ability of individuals simply to express their discontents. Within the framework of powers and obligations established by the Constitution there exists a fundamental recognition of the potential need for change as time and circumstance dictate, and a political process is provided that presumably can accommodate it. Yet this commitment to flexibility is a conservative doctrine. For while the pragmatic, scientific spirit of the Constitution contemplates improvements in the applied democratic process, its expectations are for neither radical nor necessarily frequent change. [10] There is an assumption that progress will occur with the increasingly practical enlightenment of the citizenry and its improving material condition. The doctrine of individualism informing the emergence of the republic further assumes that such progress is possible through the Constitution's guarantees of order and private libertarian action supported by a structure of law.

Of course the concept of reform is much older than the American state, and it is even a precursor to libertarian ideology. Reform is at root a term of religious politics and a model for change through return to a former, simpler state of grace. The Reformation grew out of attempts initially to restructure the Roman Catholic Church not necessarily by creating new doctrines as in Protestantism, but by recapturing a certain direct relationship between man and God, a condition that was presumed to have been better facilitated by the earlier Church and through direct individual experience of the scriptures. [11] The contemporary popular discussions of reform tend to emphasize its characteristics of improvement and correction. The restoration heritage of the concept and its religious overtones tend to be overlooked. Yet they have considerable significance in light of the secular political and social experience with reform during the past century, particularly during the last two decades.

For any discussion of American reform movements it is useful to start with Richard Hofstadter and David W. Noble. [12] Hofstadter's sharpest focus is on the progressivism of the period 1900-1914, but his study deals with themes that range from Jeffersonian agrarian idealism to the

pragmatism of Roosevelt's New Deal. Noble discusses progressive thought during the period roughly 1880-1920, but he, too, seeks to root progressive thinking and the dilemmas therein in the much older traditions of American and western liberalism. Overlaid on one another these studies demonstrate that the American reform narrative stretches back at least to the eighteenth century European strains of Enlightenment faith in progress and forward into the current generation of persistent civil libertarian and consumer movement beliefs in the power and perfectibility of the individual.

In dealing with the earlier period of American history, one notes the initial expressions of reform concerns and their legacy throughout the 19th century in the terms of rural views and needs. Thus the populist movement, coming at the end of that stage, was essentially agrarian, combining the mythology of the yeoman farmer with the practical demands of an emerging commercial agricultural industry. By the turn of the century, however, populism's hold on the reform movement was greatly weakening. The social and political conditions of the ever growing, increasingly complicated urban environment engendered a somewhat different approach. Yet it is important to keep in mind that the populist dream of a return to the small, independent, self-sufficient, free-holding worker of the land has never been entirely repudiated. Aspects of it have remained in other, less rural reform movements, and its appeal informs much of the contemporary belief in the salutory effects of the flight from the city — — from the crime, the violence, the relentless inflation and the energy shortages that mark the urban condition in the latter third of the 20th century.

During the last decade of the 19th century the center of reform activity shifted to efforts of progressivism, an essentially urban, middle-class, nationwide movement. In time progressivism absorbed many of the populist themes, and in practical political terms it depended greatly on widespread, multi-partisan support from congressmen representing all sections of the country, rural and urban. Progressivism expressed itself in the form of concerns about "labor and social welfare, municipal reform, the interest of the consumer," but its legislative program also dealt with tariff, financial, railroad and antitrust matters that were national in scope, of interest both to those concerned about kickbacks in grain transportation rates and those worried about the quality of life and politics in the cities. [13]

The progressive impulse was, of course, much more than an applied political program. It was a sentiment felt widely among the populace, in many ways its actual goals were vague and it was infused with the spirit of recovery:

(I)t was not nearly so much th· movement of any social class, or coalition of classes, against a particular class or group as it was a rather widespread and remarkably good-natured effort of the greater part of society to achieve some not very clearly specified self-reformation. Its general theme was the effort to restore a type of economic individualism and political democracy that was widely believed to have existed earlier in America and to have been destroyed by the great corporation and the corrupt political machine; and with that restoration to bring back a kind of morality and civic purity that was also believed to have been lost. [14]

Put more succinctly, "Progressivism, at its heart was an effort to realize familiar and traditional ideals under novel circumstances." The difficulty was that many of those ideals were based on myths about both the former character of American society and the changes that had overtaken it. There was a tendency to believe too fully in the image of the noble rural citizen, the enlightened small community, "town meeting" democratic process, and the prior, general existence of free enterprise economic conditions, civic virtue and personal morality.

There certainly were among the progressivists those with sufficient insight to recognize some of the realities. They were able to note the meanness of aspects of rural life, to recognize the essential differences of political heritage and cultural values accompanying the large influx of immigrants into the cities, to see in machine politics an often necessary and useful process for responding to what frequently was a closed, impersonal, legalistic American social and political order, to recognize the role of new industrial and financial organization in substantially improving general economic conditions, and to realize that many of the social and economic changes underway were largely irreversible. Yet the myths persisted, and as a result there was a tremendous ambivalence in the outlook of progressivism. There was a tendency to be of two minds about all the major issues— —the great corporations, immigrants, labor, bosses and city life. [15]

As Noble suggests, there was underlying the progressive movement a tradition of paradox in all generations of liberal thought, chief among which were the hope for the simultaneous triumphs of "civilization and savagery" and the untroubled notion that "total liberty (might be) accompanied by total uniformity." [16] Liberalism has always tended to believe in both the Garden and Manifest Destiny and in the doctrines both of individual freedom and of absolute equality. Seen in other terms the paradox extends to confusion about such things as the identity between freedoms of speech and enterprise, the association of social well being with economoic expansion, and the differences between monopoly and oligopoly. Periodically, as during the years immediately following World War I, progressivism became aware of and disillusioned by the contradictions inherent in its beliefs, but typically it came to accept, though never

to resolve, those paradoxes and to move on without significant reconceptualization to the next phase of its continuing struggle with conservatism.

In the end, then, there was substantial failure in progressive aspirations. The movement managed to encourage certain improvements in the political process, including changes in electoral proceedings and the passage of female suffrage, and it helped place certain limits on the growth of the major trusts. But it can hardly have been said to have effected massive, substantial reform in American social and political affairs. Antitrust legislation never quite fully dealt with the growing concentration of corporate power; indeed, it may have legitimized certain aspects of that growth. Small, closely-knit communities could not be readily reestablished. Changes in the character of cultural values tended to respond more to developments in social organization and communications than to progressive sermons. The clock could not be turned back; the pace of change had gathered too much momentum and the impossible moral and political standards of the reformers could not be legislated. Perhaps most importantly, the structure of all forms of organization, private and public, had grown beyond the ability of the reformers to control. As Hofstadter argues, progressive reform failed because it ignored or could not come to grips with the extent to which developments in large, complex corporate and governmental enterprise had changed the fundamental rules of economics and politics. Leading spokesman and institutions in the reform movement, while critical of the emerging forms of organization, were at the same time unwitting parts of them.

> One of the ironic problems confronting reformers . . . was that the very activities they pursued in attempting to defend or restore the individualistic values they admired brought them closer to the techniques of organization they feared. [17]

Further, as Robert Wiebe notes, there was in the progressive movement an "illusion of fulfillment."

> What the reformers failed to comprehend was that they had built no more than a loose framework, one malleable enough to serve many purposes, and that only its gradual completion would give meaning to an otherwise blank outline. They had carried an approach rather than a solution to their labors, and in the end they constructed just an approach to reform, mistaking it for a finished product. [18]

Given the professional, social and financial stature of many of the progressive leaders, this conclusion may be somewhat surprising. But in his study of the backgrounds of the leading reformers, Alfred Chandler finds that, in large part due to their individualistic spirit, there was a political independence that also reflected inexperience in national politics, a weakness that was to undermine their aspirations for achieving lasting, institutionalized reform. [19]

Underneath the progressive program was an explicit faith in a reconstituted human nature and an implicit belief in the utility of modern communications. Committed to reform within the context of constitutional law and privately controlled economic structures, progessivism sought to discern and attach to the process of reform those aspects of modernity seen as capable of reinvigorating community. Modern man was perceived as a rational, essentially perfectible being who possessed the analytic capacity and who sought the information necessary to deal with the complexities of contemporary life, in order that he might master those difficulties and return political and economic decisions to the individual and to identifiable communities. To appeal to this man progressivists seized on education, communications, science, and technology as primary instruments of reform.

In the hands of the William Allen Whites, S.S. McClures, Lincoln Steffenses and Herbert Crolys the liberating potential of the print media was presumably given regular practical demonstration. Never mind the forces at work——advertising, chain building and consolidation——that were increasingly tying newspapers, magazines and publishing generally into the same complex of organizational and commercial processes and values being attacked by the muckrakers. Freedoms of expression and press were still presumed to be remedial, and, coupled to science and general education, they would be vital tools of reform. That faith in the ameliorative power of communications carried forward with redoubled strength into the coming age of radio and television. Electronic technology was to become the apotheosis of the restoration of community.

The other major contributory theme to contempory reform perspectives was, of course, the rise of a large government regulatory apparatus during the first half of the century. This development tends to be seen as a function of the New Deal and to be argued within the framework of the tired liberal-conservative dichotomy. It is, however, a phenomenon that substantially antedates the administration of Franklin Roosevelt. The proliferation of federal administrative agencies derives from the series of regulatory and antitrust laws beginning with the Interstate Commerce Act of 1887 and the Sherman Antitrust Act of 1890, and it is a reflection of the general shift of social concerns from civic morality to administrative technique. [20] To be sure, its most expansive stage of growth began during Roosevelt's first term, but its essential logic and forms and its politically legitimate status were all established well before the advent of the Depression and the popular plea for relief from Washington. Growth in the power and authority of the federal government proceeded all through the first two decades of the 20th century, as the range of federal

legislation and executive branch initiatives extended further into those economic and social affairs that could be increasingly seen as coming under the realm of interstate commerce. The role of the national government was substantially enhanced by the mobilization and central economic planning necessities occasioned by World War I. Even during the height of the Republican laissez-faire attitudes in the mid-1920s the federal apparatus remained intact and actually grew. The number and scope of federal regulatory agencies were still limited, and under President Coolidge and his Secretary of Commerce, Herbert Hoover, they were turned unabashedly from supervison of big business to its promotion. Nonetheless the centralization of economic power in the national government steadily increased, particulary after the secretary himself became president and then was confronted with the economic crisis that was to deny him a second term. [21]

Of course, regardless of which party was in power, centralization and regulation typically tended toward protectionism, and it remains debatable how seriously threatening to the health of large-scale, commercial enterprise any of the federal legislative initiatives have been. Critical students of progressivism at the time of the New Deal saw the limitations: "The reforms of the New Deal will not lead to reform as it is carefully defined . . . ; they will not help to maintain 'freedom of contract,' freedom from monopoly, freedom of competition." [22]

It is in light of such doubts that the significance of the federal communicatons legislation can best be seen. Other than combining the prior, separate terms of regulation for broadcasting and telecommunications, and making more permanent the new FCC, the Communications Act of 1934, a Roosevelt bill, actually did very little that was new. Its broadcasting provisions were taken almost verbatim from the Radio Act of 1927, a Coolidge administration bill. That law in turn had been largely a response to commercial industry pressure, rising out of Secretary Hoover's four National Radio Conferences (1922-25) and the difficulties facing many of the major private interests in regulating themselves and exploiting radio for commercial purposes.

In view of its failure to address directly the emerging patterns of network dominance and advertising financial support, the Radio Act has been termed "obsolete." [23] A closer analysis of the law's significance suggests, however, that it was an act of legitimation——that in carefully avoiding any measures that might seriously check the emerging patterns, the law served to ratify the status quo. That ratification was reiterated in the 1934 Act, though now the support for the prior conditions was extended to the telephone and telegraph industries as well.

Thus the communications legislation of the New Deal era, while pro-

viding for a somewhat more permanent, stronger administrative structure, instituted few measures seriously antithetical to industry interests. There remained questions about the full extent of the proper authority of the regulatory agency under the governing public interest standard, and much of the reform efforts over the years have been directed at confirming that the meaning of the standard includes the rights of audiences, public access and participation. [24] However, the difficulty for the reformers has always been that, relevant court opinions notwithstanding, the prior public policy commitment to an essentially private, commercial, network-oriented industry remains, and the range of possible redefinitions of broadcasting purpose is therefore severely constrained.

Advances of the Reform Movement

Tracing the details of the broadcast reform activities turns out to be no easy task. While there clearly is a body of case law and official policy debate involving the rights and interests of citizen groups, that collection of regulatory decisions, court cases and policy statements cuts across and is tightly intertwined with a complex series of other issues that are themselves all mutually bound up. The major issues here are policies and rules on license renewals and comparative hearings, the Fairness Doctrine, deregulation, cable television, media cross-ownership and concentration, advertising and children's television, violence and pornography, prime time access, ascertainment, family viewing periods, public broadcasting, satellites, and the general, technologically-inspired breakdown among conventional conceptions of print, broadcasting, cable, computer and common carrier communications.

Further, the principal players in each case are a large, shifting cast of representatives drawn variously from the Congress, the White House, the National Telecommunications and Information Administration (NTIA), the FCC, the Justice Department, the federal District, Appeals and Supreme Courts, the several industries, the Communications Bar, private policy research firms, foundations, the academic communications research community, and the various reform groups themselves. In the past, movement of individuals among these various institutions was restricted to just a few of the groups, for example, among the FCC, elements of the commercial broadcast industry and their law firms. Now, however, with the arrival of more institutional players, the pattern of inter-organizational movement has increased, involving more groups and becoming a complex mosaic. This pattern and the attendant multiple and often overlapping, if not conflicting, identities make it that much more difficult to track all the important developments. Nonetheless it is perhaps possible to point to some of the key regulatory and policy

developments to generate a sufficiently representative picture of the principal trends.

In order to place some limits on what could otherwise develop into an exceedingly long, wide-ranging elaboration of all the issues and relationships noted above, this part of the discussion will restrict itself to one primary stream of regulatory activity, the licensing authority of the FCC, and a number of related concerns.

Licensing. A key test of the weight of reform perspectives in communications policy and regulation has been the extent to which the FCC has wielded its licensing authority and how well it has been supported in that process in legislative and judicial proceedings. The Communications Act gives the FCC authority to grant and renew licenses under the terms of the "public interest, convenience and necessity" standard. The commission is to decide whether a license applicant can best serve that public interest, and in the case of competing applicants, which one is best likely to meet the standard. The fundamental licensing problem then becomes one of determining what the standard means.

Broadcasters have always tended to try to restrict the scope of the commission's authority, arguing that the public interest criteria of the law are best served by a stable, economically secure industry, major guarantees of which are minimal regulations, security of license renewal and the provision of demonstrably popular programming. Critics and reformers, on the other hand, have tended to define the public interest as being better served by closer commission attention to the nature of licensee programming services and a stronger will to deny renewals when performance falls short of promise. Major themes of criticism from this perspective have been the charge of perfunctory licensing and the conclusion that the commission has tended too readily to accept the industry's definition of the standard.

The issue of *pro forma* renewal has been one of long standing. The FCC itself took cognizance of it at least as early as 1946 when it issued its startling and widely attacked "Blue Book." [25] That review of the responsibility of broadcast licensees was implicitly critical of the commission's own practices theretofore, demonstrating with devastating effect the failure of a number of licensees to live up to performance promises made in previous license applications and the commission's record of ignoring such discrepancies. As has been generally acknowledged, however, the "Blue Book" led to no significant change in FCC practices and was in effect repudiated. A 1958 congressional subcommittee review of the legislative and regulatory history of broadcasting confirmed that repudiation and the general pattern of commission reluctance to move beyond the

industry definition of the public interest standard. [26] That review also documented the role of congressional pressure in restricting the commission.

In 1960 in the context of the nearly complete arrival of television, the embarrassments of the quiz show, payola and ratings scandals and the evidence of increasing public and congressional anxiety about the power and impact of the new medium, the commission undertook to set out workable guidelines for the licensing process. This new Programming Policy Statement pointed to the importance of "new," "additional" and the "best possible" local services, underscoring the fiduciary responsibility of the licensee. [27] These standards were much vaguer and less stringent than the 1946 document, and the major significance of the 1960 Statement lay in its call for "assiduous planning and consultation" by the licensee in its community. This portion of the Statement and its use in a subsequent license application denial in 1962 turned out to be a major step toward ascertainment rules finally promulgated in 1971. [28] Nonetheless the criteria for licensing, for granting permits to operate the increasingly valuable commercial television and radio stations, remained a troubling, ill-defined issue.

In a 1965 Policy Statement on Comparative Broadcast Hearing the commission seemed to be trying to verify those criteria and their relative importance. [29] To evaluate the suitability of licensee applicants it outlined such factors as the owner's contribution to diversification of media control, fulltime participation in station operations, the nature of proposed broadcast service, the applicant's past broadcast record, the impact of the application on efficiency of frequency use, and the applicant's character. The growing concern about media concentration reflected in this document was the basis for an ultimately successful 1969 challenge to the renewal of the license of the WHDH, the station owned by the Boston *Herald Traveler*. [30] But the crucial change in FCC licensing policy in the mid-1960s came as a result of pressure mounted from the outside, by the United Church of Christ and others who, in a challenge of the license of WLBT in Jackson, Mississippi, were in the process of initiating a new chapter in the license renewal story.

Most observers agree on the watershed importance of the WLBT/UCC case. It is true that many local broadcasting reform efforts have roots that stretch back at least to the pre-television days of the radio listener groups. [31] But the institution of organized reform, directed not only at industry, but also at the federal regulatory and policy processes, is a later development of somewhat different character that began to mature with the license renewal challenge filed in 1964 by the UCC and two Jackson citizens.

The details of the WLBT case are well presented elsewhere and need not be repeated here. [32] What should be noted, however, is the significance of the case in four areas.

First, it rose out of the spreading civil rights movement of the early and mid-1960s. Such a case, involving the challenge to a television station's license renewal principally on the grounds of the station's record of discriminatory programming practices, could not have been pursued until the broader social and political climate had begun to turn toward a more expansive definition of the public interest, including sensitivity to the programming, employment and ownership interests of blacks.

Second, during the period of this case the core focus of the civil rights movement had expanded to include related concerns about the rights of other ethnic minorities, women, children and older citizens, among others. These were the years during which President Johnson pushed Congress into passage of the Civil Rights Acts of 1964, the Voting Rights Act of 1965 and the general build-up of the "Great Society" programs of widespread federal government social action. Meanwhile the civil rights movement grew into or at least became closely identified with general public activism organized around the antiwar movement, countercultural expression and consumer rights. Even before these matters became subjects of regulatory debate, they were reflected in broadcasting through the demonstrations, marches, and other activities organized increasingly to attract mass media attention, particularly that of television. City, county and state governments, unions, consumer and environmental coalitions, and a host of other public interest, citizens' lobby and reform groups became regular, important actors in the federal policymaking process. [33] All these activities had the apparent effect of beginning to change the environment for communications regulatory and policy debate, and they took the form of such things as a large increase in the number of license renewal challenges, more attempts to use the Fairness Doctrine to influence coverage of various viewpoints, efforts to provide public access to cable television channels, demands for formal requirements for broadcasters to carry out systematic community ascertainment procedures, more intense criticism of televised violence and the effects of advertising on children, and support for developing a stronger noncommercial, public broadcasting alternative to the commercial system.

Third, the WLBT case gave standing before the FCC and the courts to organized public interest or citizen groups. The District of Columbia Court of Appeals overturned the longstanding policy of the commission to permit intervention in license cases only by those with a clear, direct financial or signal interference interest. In the words of one observer the case, as resolved,

. . . meant that the public could no longer be ignored, either by the broadcaster or the FCC . . . For the first time the public could make the broadcaster account directly for his stewardship of the airwaves . . . Without this decision (or one substantially like it) public-interest law in the broadcast field would never have emerged. [34]

Fourth, the case involved substantial amounts of time, organization and money. A total of five years (1964-1969) elapsed between the first filing by the challengers and the second Court of Appeals decision, and it took fully another decade for the FCC to resolve all the aspects of the orders imposed upon it by the court in 1969. [35] To build and pursue the case, the United Church of Christ had to be prepared to involve itself in careful background research and in organizing the details of joint action with co-intervenors from the local community. It also had to have the resources to meet legal and other costs that eventually amounted to nearly one-quarter of a million dollars.

In the wake of WLBT, elements of the public interest movement in broadcasting expanded rapidly. During the years 1971-73 renewal denial petitions were filed against 342 stations. [36] Challenges to license transfers (sales of stations) also mounted. Because of the growing costs faced by the broadcasters, represented in legal fees and lost staff time, and because of the threat of delayed renewal, permanent losses of licenses and potentially precedent-setting court actions, many station owners began to seek accommodations with the public groups. As a result many of these cases were finally settled out of court in the form of negotiated agreements between licensees and the challenging parties. The KTAL and the Capital Cities cases are leading examples of such settlements in which, for specific promises of changes in programming and employment practices, renewal and transfer challenges were held back or withdrawn. [37]

By the mid-1970s the commission had begun institutionalizing aspects of the changed state of affairs involving the public interest groups. In 1971 it initiated formal ascertainment requirements, extending them to public broadcasters in 1976. [38] In 1972 it issued its first edition of The Public and Broadcasting——A Procedure Manual, revising it in 1974, as an apparent guide for public groups participating in license proceedings. [39] In 1975 it adopted a final statement, the Agreements Report and Order, in a rulemaking dealing with agreements between broadcasters and public groups. [40] By 1976 in response to complaints about difficulties of getting information out of the commission, Chairman Wiley established a Consumer Assistance Office. That year, too, following Congressional passage of the "Sunshine Act," the FCC established open meeting procedures, and in 1977 the Commission adopted a somewhat more detailed, potentially tougher set of equal employment opportunity (EEO) compliance criteria in reviewing applications. [41]

Further the commission extended its concern about the suitability and performance of television licensees to the noncommercial sector. In 1972, on the basis of petitions for reconsideration filed by black citizens' groups, the commission rescinded an earlier decision to grant to the Alabama Educational Television Commission (AETC) renewals for eight stations licensed to it and a new license for a ninth. It designated those licenses for hearing and then, in 1975, on a 4-2 vote, ruled that AETC had "followed a racially discriminatory policy in its employment and overall programming practices during the license period (1967-70)" and denied the AETC applications for the nine stations. [42] As in some previous renewal cases, many of the failures of the licensee had been corrected by the time the commission issued its decision. Recognizing this, the FCC permitted AETC to reapply for its licenses, though it also invited competing applications from other parties. AETC subsequently filed new applications for six of the stations, which were unopposed and were therefore regranted to it in October 1975. Its applications for the three remaining licenses were contested by a local group, Alabama Citizens for Responsive Public Television, but eventually (January, 1980) AETC, Alabama Citizens and another intervenor, Montgomery Citizens, reached a "Settlement Agreement" under which AETC made certain changes in its use of advisory groups and the challengers dropped their competing applications. [43] Though in the end AETC retained its licenses, its experience, coupled with certain EEO, federal funding, ascertainment and other policy developments, revealed that the performance of the public broadcasting community was no longer exempt from the concerns of minority and public interest groups.

Meanwhile the general federal policymaking apparatus also took some note of the reformers' concerns. The congressional subcommittees and executive agencies began to review the question of regulatory performance throughout the federal government. The Federal Trade Commission, at least temporarily, was given stronger teeth and new leadership, and the FCC's pattern of regulatory protectionism for broadcasters, particularly as directed against the cable industry, came under wider Congressional and White House criticism. By the late 1970s, under the Carter Administration, a number of former public interest group members and strong critics of the broadcasting industry had begun to find themselves in key regulatory, Cabinet agency and White House staff positions.

Countervailing Trends

Running deep within the stream of regulatory activity reviewed above there were, however, significant crosscurrents that have since become

more powerful and dangerous to the reform agenda. They also have been joined by other important policy developments which, during the 1970s, began to deflect the flow of reform activity that had seemed so fully in flood by the late 1960s.

License Renewal Policy. In an important sense the entire WLBT/UCC case was made possible by the FCC's unwillingness to change its license renewal policies. That intransigence had been revealed also in the 1965 Comparative Broadcast Hearing Statement. A close reading there suggests that, with the possible exception of the growing interest in the problem of media concentration, the major thrust of the commission's concern was to place limits on the grounds for challenges to license applications. For example, while invoking the 1960 Program Policy Statement and noting the importance of the licensee's proposed program service, the 1965 Statement cited the difficulty of comparing such programming plans and said that such plans would not be an important issue in comparative hearings. The primary goal here may have been simply to speed up the application process by discouraging "frivolous" and "extraneous" applications. To a certain extent it was this sort of attitude that helped inspire the United Church of Christ and others to undertake the WLBT and similar license challenges.

The commission's posture on license renewals remained ambivalent. On the one hand it was resisting the pressure to deny renewal to WLBT; on the other hand it was proceeding to apply the anti-concentration portion of its 1965 Statement in its decision against renewing the license of WHDH. That decision was upheld by the Supreme Court, and in 1972 the *Herald Traveler* was forced to divest itself of the station. Although the Court of Appeals decision in WLBT was not released until June 1969, the pro-challenger climate of the courts and of a significant portion of the commissioners was enough to set off a reaction within Congress and the FCC.

The ink was barely dry on the WHDH decision in early 1969 when John Pastore, Chairman of the Senate Subcommittee on Communications, introduced legislation (S. 2004) seeking to prohibit the FCC from considering competing applications for licenses at renewal time until it had first determined that granting renewal to the incumbent licensee would not serve the public interest. [44] This bill, with its "two-step" license renewal process, had substantial industry support, and initially it enjoyed widespread co-sponsorship in Congress. But it soon ran into serious opposition from public groups and others, and by the end of the year it had stalled. At that point (January 1970) the Commission issued a new Policy Statement Concerning Comparative Hearings, attempting without a for-

mal rulemaking proceeding to adopt the terms of the Pastore bill. [45] Challenged by two of the leading public interest groups and others, the Statement was ultimately overturned (1971) by the Court of Appeals, and the commission was ordered to return to the comparative hearings process.

The commission responded in part by issuing the Procedure Manual in 1972, then revising it in 1974. The Manual seems to be a guide to citizens' groups in how to approach license challenge proceedings. It gives strong endorsement to the notion that "establishing and maintaining quality broadcasting services is a matter in which members of the community have a vital concern in which they can and should play a prominent role." Yet the position taken by the commission here places most of the burden for challenges on the local groups. They are cautioned throughout to try to resolve their complaints with the broadcasters first, to "avoid clogging" the commission with complaints, to be certain any complaint filed is a "legitimate grievance" and to determine that the complainants themselves have appropriate credentials as "parties at interest."

To be sure, the Manual is full of practical advice on how to deal with the commission and to enhance the likelihood of success in getting a full hearing when bringing challenges. On the other hand, the Manual is an effort at discouragement. It is dense and intimidating, invoking all the complex language and procedures of administrative agency practice. It makes it quite clear that complaints must be brought *to* the commission, that the FCC will continue to avoid taking any initiative in opening inquiries into broadcaster performance and that the burden of proof will remain on the challenger. All in all the Manual suggests that, while now recognizing its obligations to accommodate citizen groups and their challenges, the commission itself was going to remain as passive an actor as possible, treating challengers skeptically.

Uncertainties about license renewal policy continued to develop during the late 1970s. In 1976 the commission approved the renewal of WESH-TV, a Cowles Broadcasting station in Florida, rejecting a competing applicant's challenge to the quality of prior service by the station and to the lack of diversification represented in Cowles as a media crossownership enterprise. The following year the FCC "clarified" its ruling on the quality-of-service aspects of the case, though it did not change its decision on the renewal. Three citizen's groups petitioned the commission to reconsider the "clarification," and when the Commission turned them down they appealed to the courts. To date there have been two Court of Appeals decisions in the case. In the first (1978) the court remanded the case to the commission for reconsideration, finding that the "state of administrative practice in commission comparative renewal proceedings is

unsatisfactory. Its paradoxical history reveals an ordinarily tacit presumption that the incumbent is to be preferred." [46] The second decision (1979) rejected an out-of-court settlement between Cowles and the competing licensee, Central Florida, returning the case to the commission, which in 1981 voted to renew Cowles' license. [47] That decision was, of course, unsatisfactory to Central Florida, leaving open considerable prospect for further court review.

Meanwhile, although the commission had been upheld by the courts in a 1973 decision to renew the license of RKO General's KHJ-TV in Los Angeles, by the late-1970s the renewal of RKO's Detroit station, WOR-TV, also had been challenged, and the commission had been confronted with additional evidence about the business practices and inaccuracy of information filed with it by the parent company, General Tire. Accordingly, it reconsidered RKO's suitability as a licensee and in January 1980 denied renewal of the group's Boston station, WNAC-TV. This decision applied as well to RKO's still-pending renewals for the Los Angeles and Detroit stations, and it also raised questions about RKO's right to continue holding the licenses for its thirteen other broadcasting properties. In addition to denying the renewals for the three stations, the commission designated for hearing the renewal applications for all the others. In view of the case's staggering impact on RKO, its potential precedent for commission decisions on the suitability of other major group owners, and the narrowness of the vote (4-3), the case was appealed. In December 1981 the Court of Appeals in Washington, D.C. affirmed the commission's decision on the Boston station, WNAC-TV, denying its renewal, and remanded the proceedings on the other two to the commission for further consideration. RKO appealed, but in April 1982 the Supreme Court refused to review the FCC decision, in effect forcing RKO to give up its Boston station, which it did the following month. [48]

The commission's determination in the RKO case should be kept in perspective, seen in light of other FCC license renewal activities. For instance, during the process of considering the Procedure Manual the commission became aware of the growing number of agreements being reached between broadcasters and citizen groups. In order to avoid license renewal delays, many broadcasters had gone along with the settlement process. But many of them were also becoming unhappy with the growing powers of the public groups, and they made these concerns known to the commission. Initially the FCC routinely approved the terms of such agreements. But in time and with the encouragement of the broadcasters it began "to express concern over the possibility that citizen settlements were coming to involve excessive delegations of authority from broadcasters to citizen groups." [49] Accordingly it began delaying decisions on

many settlement agreements and petitions to deny, and by 1975 it had accumulated a large backlog of such cases.

To deal with the developing conflict between broadcasters and petitioners and to unclog the renewal process, the commission initiated the rulemaking on settlement agreements that led to the 1975 Agreements Report and Order. An early analysis of the terms of proposed rules issued during that proceeding and the various positions adopted by the commission suggests that the policy as it emerged was so vague and subject to such divergent interpretations that it was unclear whether the commission was adopting a position that would encourage "greater involvement of citizen groups" or whether it would "freeze such involvement at a low level." [50] Clearly the final report and order informs the licensees that they may not delegate responsibility for making public interest decisions and that they must retain the freedom to adjust the nature of their service as their perception of the public interest changes. It is unclear, however, whether that is a policy that works to the advantage or disadvantage of the public groups. Further, the commission argued that it does not want "to intrude unnecessarily into the processes of local dialogue and the exercise of licensee discretion," and therefore it will grant "considerable deference" to licensees and "not prescribe or prohibit any particular agreement terms . . ." [51] Again from the citizen group perspective the full significance of this position is unclear.

A slightly more recent analysis agrees that the "document had something in it to please everybody" and that its "practical effect (remains) hard to gauge." [52] The appropriate conclusion would therefore appear to be that the commission's ambivalence remained and that while citizen group activities in this area were not prevented explicitly, they were given only marginal encouragement. To the extent the reformers sought greater leverage against the broadcast industry, the commission proved reluctant to grant them too much.

Of course the commission is only one part of a policymaking process which has over time tended to accommodate broadcaster interests in licensing matters. In 1972 Clay Whitehead, then Director of the White House's Office of Telecommunications Policy (OTP), proposed license renewal legislation that not only would have provided a two-step renewal procedure essentially the same as those in Senator Pastore's S. 2004, but it also would have extended the license period from three to five years. [53] The five-year renewal term had long been an objective of the commercial broadcasters and had been proposed regularly by the NAB. It had been put forward periodically in various bills introduced in Congress, and at least as early as 1957 the FCC itself had requested such legislation. [54] In 1973, in conjunction with yet another request for a two-step

licensing bill, the commission reendorsed the five-year term proposal. [55] In 1974 more than a dozen such bills were introduced in Congress, some by powerful, senior members of the Senate and House. By the end of the year both houses had passed different versions of the OTP bill though one rejected any license-term extension and the other provided only a four-year term. [56] But 1974 was also the year of the Nixon resignation, and in the broadening wake of revelations about Watergate, other aspects of OTP and White House attempts to influence broadcasters and publishers had become more apparent. Further, serious differences remained within Congress about the terms and necessity of the bills. Accordingly they were allowed to wither. Yet during 1975 and 1976, OTP and the commission continued to promote proposals for changing the renewal process. [57] More importantly, by the late 1970s, under the mounting pressure for deregulation, the broadcasting provisions of the "rewrite" bills were contemplating establishing indefinite license renewals for all broadcasters, to be provided immediately for radio, to be phased in over a period of years for television. In a less politically charged atmosphere the policymaking process was proposing to provide the broadcasters with license security far beyond their prior expectations, and, to the extent further commission and court decisions in the Cowles and RKO cases should wiegh against the incumbent licensees, industry pressure for far-reaching renewal deregulation continued to mount.

A few other commission actions, or inactions, should also be noted. For instance, in 1979, in spite of the considerable concern about media concentration expressed by the FCC since the mid-1970s, and in the midst of its deliberations on RKO and the pending court action on Cowles, the commission approved the largest publisher and broadcasting crossownership merger in its history, that of the Gannett Company and Combined Communications. [58] In 1980 the Commission approved an even larger merger, this one involving purchase by General Electric of Cox Broadcasting. That deal fell through at the last minute due in part to certain commission rule restrictions and citizen group actions, but mainly due to a dispute between G.E. and Cox about the financial terms of the acquisition. [59] There was nothing in that breakdown that necessarily prevented subsequent renegotiation and renewed efforts to effect this particular merger——or any other, perhaps even larger, consolidation. Such a possibility was realized when, in July 1981, the commission approved the proposal by Westinghouse Electric Corporation to purchase Teleprompter Corporation. The NCCB, the National Black Media Coalition and other parties had unsuccessfully petitioned the commission to deny approval for the merger, and subsequent court appeals at both the United States district and Supreme Court levels likewise failed. When consummated

this merger became the largest electronic media consolidation, making Westinghouse, which since the earliest days of radio had been one of the principal non-network broadcast property owners, the nation's largest cable multiple-system owner and giving it substantial cable programming, film and music holdings. [60]

Although the FCC did establish its Consumer Assistance Office in 1976, that decision must be seen in the context of two other steps the commission refused to take. The first was the failure between 1971 and 1974 to move ahead with a proposal for creation of an Office of Public Counsel, an in-house unit that would help public groups prepare cases and more effectively participate in FCC proceedings. The second was its refusal to establish procedures and actively to seek funding from Congress for providing reimbursement for expenses to public-group representatives otherwise unable to afford the costs of participation in appropriate proceedings. [61] The establishment of the CAO ought not be belittled. It has provided a useful point of access for outsiders to information not previously available. But its mandate fell far short of the active support for public participation implied in the other proposals the commission chose not to adopt. In summary, then, from the perspective of the reform groups, it remains questionable to what extent regulatory attitude or practice in license renewal matters had, in fact, changed in the decade-and-a-half since the first WLBT filing by the United Church of Christ.

Other Policy Crosscurrents

Telecommunications Policy Review. Increasingly during the 1960s and 1970s questions of federal policy toward broadcasting were raised in light of developing uncertainties about the newer technologies of electronic communications, the attendant industrial competition and realignments, the various attacks on the regulatory process and general anxieties about the societal impact of these media. By the mid-1970s the interest in reappraising federal policy came to be associated with proposals for major revisions of the communication legislation, substantially unchanged since 1934.

The technological changes were reflected in the spread of broadband cable television; the rapid adoption of satellites in various forms of commercial enterprise; competitive pressures on the telephone monopoly; introduction of home video recording and playback equipment; continuing progress in hardware miniaturization, computing speed and capacity; and, through it all, the steady evaporation of the distinctions among broadcasting, telecommunications, film and print. Nearly all the major industrial interests in the broadcasting, cable, electronic common carrier, program production, data transmission, computing and publishing fields

were beginning to jockey with one another, seeking to reposition themselves as advantageously as possible for exploitation of the emerging communication forms. To the extent the existing communications regulatory process tended to favor one party or another, such interests did not seek policy changes. But to the degree that the process was changing too slowly or too quickly in relation to the different needs of the contending parties, pressures began to build for major adjustments within the established regulatory structure or, failing that, for more sweeping legislative measures. Adding to these often conflicting pressures for policy redefinition were the broader societal uncertainties associated with the civil rights, antiwar, consumer and other public movements which, taken altogether, seemed to imply a certain need to reassess the adequacy of electronic communications, particularly broadcast television. The court support for the citizen groups during the late-1960s appeared to underscore this need.

The policy review process proceeded simultaneously in a number of official and unofficial channels, with events in various forums directly or indirectly affecting one another. There was no mutually agreed-upon order to the process, nor any prior arrangements about which forums would predominate at which stages. Events tended to be responsive to forces and conditions that often were extraneous to any specific considerations about communications policy.

In retrospect, it is possible to see three distinct phases of the policy review process beginning in the mid-1960s and extending to the present. The first phase emerged roughly during the 1967-77 decade with a series of presidential and other high-level commissions or task forces, each typically issuing a report on a broad range of communications policy matters based upon a growing body of foundation and federally-sponsored technical, social, and policy research. The second phase, still developing, involved the direct, official entry of Congress. It began in 1976 and 1977, principally in the Subcommittee on Communications of the House of Representatives, and has continued with an increasing, and eventually more telling, involvement by the Senate Communications Subcommittee. These congressional efforts have consisted of various reports and hearings reviewing federal policy toward cable, broadcasting and telecommunications and of several drafts of new communications legislation——the "rewrite." Overlapping both of these periods has been a simultaneous third phase principally involving the FCC. Since the early 1970s the commission has been trying to adjust to the developments in the other phases, undertaking inquiries and even major regulatory changes in reaction to or anticipation of the policy signals emanating from the other areas.

The relatively comprehensive review process beginning in the mid-1960s represented something of a departure in American communications policymaking. Up to that point the national political leadership and most of the broadcasters and major telecommunications interests had been reasonably comfortable with the policy process as it had traditionally operated. During broadcasting's first generation——its radio-only period——and during the first two decades of television, policy issues had been handled by the Congress, typically through the regular oversight and budget proceedings for the FCC (held by the appropriate Senate and House subcommittees) and through periodic hearings on such matters as juvenile delinquency, television violence, Section 315 amendments, the Fairness Doctrine and appointments to the commission. Through organized lobby activities and through careful attention to the broadcast coverage needs of congressional incumbents and candidates, the broadcasters had succeeded quite readily in helping guide the policy development process along lines posing little threat to the industry's fundamental structure and purpose. Similarly, for the better part of a century the major telecommunications interests, particularly AT&T, had helped guide the emergence and terms of the federal communications policy structure governed by the 1934 Act.

By the late-1960s, however, the former procedure was giving way to more involvement by the executive branch. In their battles with Congress over policy changes in a wide range of federal activities, the Kennedy and Johnson administrations had begun to resort to the regular use of official and quasi-official presidential commissions. These task forces had seemed to become useful for reviewing problematic social issues and providing at least the image of serious government concern, while also securing more time to gauge and perhaps influence the then current mix of political forces before deciding what, if any, steps to take. This method spilled over into broadcasting when Lyndon Johnson appointed, for the first time in American history, a presidential Task Force on Communication Policy, which issued its final report in 1968. [62] The Carnegie Commission on Educational Television of 1966-67 had not been appointed or funded by the government, but the President had given its formation a great deal of encouragement, certain of its members were appointed with an eye to their influence in the White House and Congress, and the President quickly helped guide several of its recommendations into enactment as the Public Broadcasting Act of 1967. [63]

During the Nixon and Ford administrations the task force mechanism continued to be used, particularly for cable issues. In 1971 the Sloan Commission issued its report on cable; in 1972 and 1975 such groups as the Conference Board and the Committee for Economic Development

published studies on cable, broadcasting and related technological and economic issues; in 1974 the President's Cabinet Committee on Cable Communications put forward its recommendations; in 1971 the Aspen Institute of Humanistic Studies created a program on Communications in Society that published a number of studies throughout the 1970s; and during this same period the Rand Corporation, with federal and foundation support, commissioned a large number of similarly oriented reports. [64] Repeatedly these reports dealt with the importance of the changes taking place in electronic communications technology, stressing particularly the implications of broadband cable, the challenges to conventional broadcasting and the inadequacies of the federal regulatory response.

By the late-1970s the executive branch initiative in these matters had slowed somewhat. The Watergate period, with the evidence of attempts to use White House agencies to influence the media and the federal communications regulatory process for baldly partisan purposes, focused attention on problems for communications policymaking created by the rise over a period of several decades of what Schlesinger terms the "imperial presidency." [65] Meanwhile the leadership in Congress had begun to change significantly in all areas, including communications. There was no longer the same identity of purpose among key legislators, old regulatory processes and balances of conflicting interests. New communications subcommittee chairmen meant new staffs, new patterns of influence and needs for at least the appearance of distinct new policy purposes. The result was the reassertion of a certain degree of congressional policy initiative, first in the House, then in the Senate.

During the first, task-force phase of the policy review period the broadcasters had become both alarmed at the license renewal successes of the public groups up through the early-1970s and retantalized by the old dream of greater license security. As we have seen they became involved with Congress, the White House, the FCC and the citizen groups in a complex pattern of pressures and counter-pressures revolving around efforts to encourage regulatory restrictions on the acceptability of settlement agreements and to pursue legislative relief through the various bills offering longer-term license renewals and the S. 2004-type of constraints on the ease of renewal denial. When those somewhat narrowly focused legislative steps faltered during the mid-1970s and as the imminent arrival of a large, commercially successful cable industry became more apparent, the next option for the broadcasters was to deal on a broader plain. The initial bargain was an OTP-guided "Consensus Agreement"—a compromise with cable on the terms of a long-delayed new copyright law and of revised cable rules. [66] The next was an agreement with then

FCC Chairman Wiley to initiate the so-called "family viewing hour" (later breached in practice and tied up in court action). [67] But the major step was to begin discussing with congressmen and others the possible terms of new, more broadly ranging communications legislation. Always publicly opposed to the "rewrite," the broadcasters nonetheless began to explore the grounds for legislative negotiation.

The effort in the House began in the mid-1970s, shortly after the appointment of new Communications Subcommittee Chairman Lionel Van Deerlin (D-Cal.). Early in 1976 the subcommittee published a Staff Report on cable television, which served as the basis for hearings on the subject a few months later. By mid-1977 the subcommittee staff had prepared an extensive set of Options Papers directed toward formal legislative review of most aspects of the Communications Act. A year later (June 1978) the chairman and other members of the subcommittee introduced the first sweeping draft of the rewrite. After the hearings on that bill, and in light of wide-ranging, often conflicting opposition from nearly all quarters, the chairman and his staff pasted together a second draft, introduced in March 1979. [68]

The Senate Communications Subcommittee had undergone even more important leadership changes in 1976, with the retirement of longtime Chairman John Pastore (D-R.I.) and his chief staff counsel, Nicholas Zapple. During the subsequent readjustment of forces within the subcommittee, and in the parent Commerce Committee as well, new Chairman Ernest Hollings (D-S.C.) was somewhat reluctant to join the rewrite process. Over time, however, the Senate role has become increasingly important. The Hollings subcommittee held its own cable hearings in 1977 and by 1979 had begun to entertain "renovation" drafts — versions of rewrite legislation more narrowly focused than the House bills. [69] By early 1980 the members of the House subcommittee, with varying degrees of enthusiasm, had appeared to agree to scale down their measure, introducing a third draft (H.R. 6121) more along the lines of the Senate bills. Shortly thereafter the Senate subcommittee worked out a compromise among its own members and introduced yet another draft (S. 2827) that appeared to demonstrate a certain willingness to rebroaden the focus. [70]

There is not space here to recount all the details of the first two or three years of the rewrite effort. What is important to underscore here is how close the broadcasting industry came to a complete coup at various points in the process and how readily it has since recovered. The bargaining over the terms of the first House version of the rewrite (1978) led to a tentative accommodation in which the broadcasters would agree to pay a "spectrum use fee" in exchange for a general deregulation of broad-

casting, including elimination of the public interest standard, removal of the Fairness Doctrine, virtually permanent license renewals and the effective gutting of the FCC. [71] The outcry from the commission, the public groups and others over these provisions and the opposition of most interested parties to one or more aspects of other sections was sufficient to scuttle the first draft. The second version (1979) ran into a similar range of opposition, and it too stalled. But one should note that although the second draft reinstated the public interest standard, it still provided for the nearly total deregulation of broadcasting, licenses in perpetuity and an even more modest spectrum fee. [72] Although the broadcasting portions of the rewrite effort in the House appeared to have been abandoned in late 1979 (H.R. 6121), the two 1979 Senate bills and their 1980 successor (S. 2827) retained certain broadcasting and cable provisions.

In the wake of the 1980 elections the importance of the Senate subcommittee's role continued to increase, but the various, substantial divisions throughout Congress about the necessity and exact terms of a comprehensive rewrite also remained. On the House side the Democratic majority slipped considerably, and Chairman Van Deerlin, the single most insistent congressional proponent of the rewrite, failed to win reelection. [73] Those developments suggested that the disarray that had been apparent in the House subcommittee since the introduction of the first rewrite in 1978 would likely continue. On the Senate side the emergence of a Republican majority led to another leadership change in the subcommittee. New chairman Barry Goldwater (R-Ariz.) had been a co-author of one of the 1979 renovation drafts and a principal architect of the 1980 compromise bill. He had never been enthusiastic, however, about the total rewrite effort. At the commission Democratic Chairman Charles Ferris was replaced by Republican Mark Fowler, whose policy goals centered around accelerating the deregulation process, transforming it into an era of "unregulation" based entirely on marketplace principles.

At the outset it was unclear whether the new Reagan administration had any interest in pursuing sweeping changes in telecommunication legislation. There was little doubt about its endorsement of fundamental, longstanding Goldwater positions on broadcasting that were much more deregulatory than the S. 2827 compromise provisions and similar to aspects of the first and second House rewrite drafts. [74] Shortly after being appointed subcommittee chairman Senator Goldwater noted considerable interest not only in pursuing such matters as unlimited radio license renewals, ten-year television license periods, elimination of the Fairness Doctrine, and a substantially reduced FCC, but also in ending further efforts to develop the spectrum fee. [75] The latter had been, of course, the major "public dividend" of the House rewrites.

As the 97th Congress and new administration came into being early in 1981 there were no indications of what substitute provisions, if any, might be made to accommodate citizen group concerns about the extent of these deregulation steps. Indeed, as the new Congress proceeded with the communications legislation debate it became clear that there were to be no significant "trade-offs." In August 1981 the Senate Republican majority managed to secure passage of several broadcasting provisions in President Reagan's massive budget legislation. The most important of those was to extend broadcast license terms to five years for television and seven for radio. [76] As part of this maneuver Congress came quite close to also passing other measures, chief among which were provisions that would have eliminated comparative license renewals, confirmed various FCC deregulatory decisions for radio, established a modest license fee, and instituted indefinite broadcast license renewals. During 1982 several bills were introduced containing some of these provisions, and in March one such bill (S. 1629) passed the Senate. Although the House did not pass a comparable measure before Congress recessed for the 1982 elections, both houses did agree on a somewhat less controversial series of further amendments to the 1934 Act (H.R. 3239), and, as part of the 1982 budget reconciliation bill, they agreed to a provision reducing the size of the FCC (from seven to five members). [77] It appeared that Congress was engaged in a process of incremental legislative changes which, taken together, were edging ever closer to formal statutory endorsement of substantial deregulation of American Broadcasting. It also appeared increasingly likely that for these measures broadcasters would have to give up, at most, only payment of a minor spectrum use fee. Further there were growing signs that in the process they might secure elimination of the public interest standard, thereby removing licensees from the fiduciary principle, necessary for any reform effort to retain significant public oversight of broadcasting. [78]

In summary, then, it is important to make one or two observations about this decade-long policy review process. First, although not initially apparent, the process established a pattern of continuing reform compromise in which, on point after point, the major affected industries seemed to be emerging relatively unscathed. While the growing amount of inter-industry competition and realignment involved occasional accommodations among these parties, on balance the reform movement tended to be the one institution consistently losing the most ground. Second, this pattern has had broad bipartisan support over the years. Many liberal reformers have tended to assume that their agenda has been more readily endorsed by Democratic politicians. Yet the evidence is not all that convincing. All of the initial compromises of reform positions took

place during a period of Democratic control in Congress, and many were accomplished under the Carter administration. The general trends have proceeded in roughly the same directions regardless of which party has controlled the executive branch. Thus the significance of the 1980 Reagan victory and a substantially enhanced Republican position in Congress was not so much any major policy changes, but rather intensifications of preexisting tendencies.

Cable. Much of the policymaking concern reflected in the major task force reports and legislative proposals focused on cable television, and the conflicts there with reform interests have become increasingly clear. Over and over again the policy commission reports between 1968 and 1976 made recommendations for cable that invoked the traditional American ideals of improving the quality of the public dialogue, enhancing the democratic process by broadening the range of media content, providing more information on important issues and bringing more citizens into the communications process. They suggested as operational objectives the need to provide broader channel capacity, increased public access to communications media, more diversity of content, enhanced competition and decreased protective regulation. Based on several exhaustive reviews of the history of cable regulation, there was a growing consensus among the task force reports and those participating in the congressional cable hearings that the FCC had been far too concerned about cable's impact in the economic fortunes of the broadcasting industry and had therefore engaged in restrictive rulemakings that had the effect of unreasonably delaying the advent of a broadband "wired nation." [79] A major assumption here was that many of the problems associated with mass-audience, advertiser-supported broadcast television would ebb away under conditions of open competition between broadcasting and cable. A further assumption was that once returned to a condition of "free marketplace," cable would provide the diversity of content crucial to the underlying purposes of freedom of expression and information flow. As a result nearly all the prior reports had called for deregulation of cable by the FCC.

Even without a new law the regulatory process began responding to the congressional and executive calls for deregulation. In 1972 as part of its revised cable policy the commission issued a new set of rules designed to encourage cable growth in the major urban areas, while insuring the availability of several channels for public, local government and educational system access, as well as local program origination. [80] Successful in stimulating commercial cable growth, the commission formed a Cable Deregulation Task Force in 1974 and then proceeded to withdraw most of

its origination and access channel requirements and to divest itself of its responsibilities for certification (licensing) of local cable franchise agreements. A major legitimization of cable deregulation came in 1979 when the Supreme Court, upholding a lower court ruling, overturned the remaining cable access rules, arguing that in establishing such provisions the commission was treating cable like a common carrier, an approach the Court felt Congress had not intended the commission to take. [81] The terms of the "rewrites" both before and since the Court's decision have revealed no current congressional intent to restore such cable regulation authority to the commission. By 1980 the commission had repealed its distant-signal importation and syndicated exclusivity rules, thereby removing all but two or three regulations governing cable programming and eliminating the most important vestiges of protection for broadcasters. That decision was challenged in the courts, and although the commission's ruling was initially upheld, other appeals were still delaying resolution of the matter in mid-1982. [82] But there was little indication that the prevailing judicial or legislative approaches would diverge from the cable deregulation trend. Meanwhile the commission declined to adopt rules proposed by NCCB and others restricting multiple cable system ownership, and one of the rewrite measures with some strength in Congress (S. 2172) contained provisions strictly limiting the cable regulatory powers of local and state authorities. [83]

Yet by the early 1980s there was not much in the emerging application of the federal policies to suggest the realization of the programming and service ideals. As the cable regulations came off during the late-1970s, the evidence of change in the structure of cable ownership and of the services provided did not square with the image of significant content diversity. As cable has grown there has been a steady increase of concentration in large, national, cross-media, multiple-system-owning corporate enterprises, and as satellites and other new technologies have been harnessed to cable, the services provided have been primarily more movies, sports and commercial entertainment. [84] It has been possible to observe the emergence of more discrete, smaller audiences, providing an aspect of the call for the "television of abundance." But those audiences are a handful of groups organized by demographic, ethnic or taste categories into a series of national strata much like magazine audiences. There is little evidence of cable being developed in any American community on a truly interactive, multi-directional, switched-signal basis. [85] Cable remains fundamentally a one-way, centralized distribution method for national programming fare in which the accumulation of large, extra-local aggregates of viewers and subscribers is a principal economic motive. The ability of independent producers and citizens to

provide substantial amounts of locally originated programming dealing with important public issues and encouraging exchange among community residents appears to be little better than it was a decade ago. Cable's operational concept of the public and the role of communications within it turns out to be little different than that of broadcasting. Therefore, taking all of these developments together, it remains difficult to see how change in federal communications policy toward cable has contributed to the reform movement's goal of significantly broadening and improving the public dialogue and democratic process through the new medium.

A major explanation of the reform group losses here lies in the assumptions about what constitute effective remedial measures. Certainly correct in the initial analysis of the protective nature of the regulatory process, the faith of all the studies in the efficacy of marketplace forces remains less well founded. To begin with, of course, there never has been a free, open marketplace in broadcasting and cable program production or distribution, nor really have such conditions ever widely pertained in modern mass communications and telecommunications. It is even difficult to argue that the free marketplace model has been a valid image of the American economy in general at any time since the mid-19th century, that is, since the arrival of large, national, corporate enterprise and of the contemporary regulatory-apparatus response. Thus the promise of being able to return to or create the conditions of open competition in communications is misleading, if not patently false.

Nonetheless the opposition to regulation has continued to mount, and the reform group interests in that process have been seriously compromised. The reform movement had done much to focus the attack on the regulatory process as too protectionist of established industrial hegemony and as too little concerned about the public service component of the public interest standard. For a much longer period of time, though, the industry had been making assaults on the regulatory process as unnecessarily bureaucratic, economically inefficient and an infringement on its right as an extension of the press, operating under First Amendment freedoms. Rising in an even broader climate of increasing bipartisan opposition to economic regulation, the joint industry and reform calls for initiating a program of communications regulatory overhaul were successful. But by the time deregulation began to take shape, the reasons for the reform concerns had been forgotten and the longstanding major industrial interests had reasserted themselves. Deregulation was to go forward, but public service considerations were ignored——or at best they were assumed to be realizable through marketplace forces.

Another dimension of explanation can be found in the terms and process of the congressional portion of the policy review effort. This activity

took shape largely through the 1976 Staff Report of the House Subcommittee on Communications, the long set of hearings later that year and then the publication in 1977 of the Options Papers. As with the various task force documents, these massive records deserve closer examination than it is possible to offer here, but again certain summary comments are possible. Principally, the House subcommittee activities represent the forum through which all the various critiques of prior regulatory policy were wedded to the resurgent laissez-faire economic ideology as the basis for the wholesale revision of the legislation.

The major surface critique in the House effort was of the FCC's handling of cable, and through it all the reform movement's concerns seemed to be under serious consideration. The Staff Report reviewed the failure of the FCC's television frequency allocation policy to provide the genuinely local service as originally intended, and it suggested that the potential of the cable alternative was seriously undercut by commission willingness to defer to industry-proposed compromises. Congress was urged to reiterate public interest concerns, "not to view the problem as a clash of private interests, but to consider whether the pubilc interest is being served by the existing regulatory posture on cable television." [86]

Yet the neolibertarian economic rhetoric increasingly appeared. "(W)hile the advantages of cable television technology are apparent, the success of cable television as an industry is by no means assured. But it is the marketplace——not unnecessary government restriction——that should make that determination." [87] Thus the congressional policy review process had agreed by 1976 to accept as a fundamental tenet the major underlying theme consistently appearing in all the presidential communications policy task force reports since 1968——the promise of the open marketplace model. The commitment to that position became all the clearer in the Option Papers wherein most of the "options" (some clearly are preferred by the staff) for cable, broadcasting and other services rested on the opening paper's plea for resort to market mechanisms in allocating the spectrum. [88] The difficulties of adopting such tools in broadcasting and in making the transition were acknowledged, but the basic intent persisted: to provide as pure a free enterprise system of economic incentives as possible and concomitantly to eliminate as much as possible any regulatory discretion on the vaguer, non-economic public interest grounds. The subsequent efforts of various versions of the rewrite to drop the "public interest" language of the 1934 legislation and to substitute competitive market forces were well rehearsed in these earlier documents. What were not so well reviewed were the substantial conflicts of such approaches with a broader social notion of public service.

Other Issues. The general policy reviews process and the specific hopes

for cable have been only two of the major expectations for telecommunications reform. Another has been enhancement of the capacity for competition in services and equipment in the telephone and common carrier industries. Public interest concerns here were to reduce consumer costs and to provide access to the distribution system for more and varied services. Key means to achieve these goals were seen to be promotion of competition between the Bell system and other telecommunications enterprises and prosecution of a Department of Justice antitrust suit against AT&T. Among other things that suit was to force AT&T divestiture of Western Electric as a condition for permitting Bell entry into certain unregulated telecommunications services, including cable television, that had been denied it ever since a 1956 consent decree agreement. Certain aspects of telecommunications competition had appeared to be accomplished in a series of FCC inquiries and rulings between 1968 and 1980, during that third overlapping phase of the general review effort. [89] Yet by the early 1980s various terms of the different pieces of legislation still before Congress had abandoned the divestiture plan, provided only limited forms of competition and left open the possibility of telephone company entry into the cable business. In January 1982 the Justice Department, in a substantial shift from positions under prior administrations, announced terms of a new settlement with AT&T that would permit it to enter into the area of unregulated data processing services in exchange for divesting, not Western Electric, but its much less profitable local, Bell operating companies. With certain amendments that agreement was approved by the federal courts in August 1982. [90]

In Congress and the White House the battles had thereby turned out to be not over how to permit greater ease and lower cost of telecommunications services among individual people and small groups, but over the right to provide equipment and carrier capacity among commerical enterprises engaged in large volumes of data exchange over long-distance routes. For a period public groups had been able to exact certain concessions from broadcasters, but they have been largely unable to grapple with and influence the policy debates surrounding the telephone industry and its widening involvement in telecommunications. Through it all there has never been any clear reform group or policy agency conception of just how, when and on what terms the telecommunications melding of broadcasting, cable, and common carrier communications is to take place. There is a vague notion that it will and ought to occur, but again the only consistent guidance that has emerged has been the rhetoric of the marketplace.

Public broadcasting is another example. This was an institution which was at first greatly aided by the reform instinct, but which became in

time an attractive and particularly vulnerable target. After watching a decade of new and apparently still growing federal support for public broadcasting, the reform groups began to note, often quite correctly, its deficiencies in such areas as local programming, support for independent producers, employment and programming for minorities, women and other groups, and its trends in commercialization. Disturbed by such problems, the citizen groups were able to bring considerable pressure to bear on the noncommercial enterprise through a variety of FCC inquiries and special provisions in the 1978 Public Telecommunications Financing Act and the broadcasting portions of the proposed rewrites. [91] Yet so far those changes, while encouraging certain internal reforms, have also managed to contribute to other trends that appear to be restricting the improvement of public broadcasting's funding and its institutional strength. Even before the 1980 elections the result had been the virtual revocation of the long-range funding policies of the landmark 1975 Public Broadcasting Financing Act, the leveling out of annual federal funding at an amount well below the authorization levels contemplated in the 1978 Act, and the apparently serious proposal in the second House rewrite draft (1979) to permit advertising in public broadcasting. [92] Since then the Reagan administration's program of federal budget cuts has led to a series of substantial funding reductions, down over 25% from 1982 to 1983, and the initiation of an advertising experiment among some stations. The ultimate effect of such adjustments has been to reduce the likelihood of public broadcasting ever providing the fullscale alternative to commercial broadcasting or serving as the major, important portion of cable communications that many reformers had originally envisioned. [93]

Other examples of reform interest losses abound. After the 1980 election many of those former public interest group representatives and broadcasting critics who had taken positions in government began to be removed. Congressmen and regulators had repeatedly urged networks and broadcasters to change aspects of the portrayal of violence and to inject certain informational, educative segments into children's programming. Yet overall the preponderance of simple-minded cartoon fare has remained on Saturday mornings, and during the evenings, when most children view, the content has not change sufficiently to please children's interest advocates. Meanwhile the dearth of daily children's programming has been worsened with the CBS decision, first, to cut back and reschedule the venerable *Captain Kangaroo* and, then, to remove it entirely from weekday television, relegating it to a weekly appearance on Saturday. For years ACT has sought the elimination of advertising on children's programs, yet to date there have been only minor reductions, and after a long, bitter struggle the entire children's television advertis-

ing inquiry by the FTC has been scuttled. [94] Simultaneously the FCC has refused to take final action on ACT's twelve-year-old petition of a general children's television rulemaking, prompting an ACT suit against the Commission in May 1982. [95] Meanwhile the FCC has also downplayed and cut back the role of its Consumer Assistance Office.

In other matters, elimination of certain same-market, media cross-ownership arrangements has been accomplished, not by significant divestiture of any element in publishing-broadcasting-cable combinations, but by station trades among the affected parties, adding to the absentee landlord pattern in local media control and providing only token gains in the number of independent and minority licensees. EEO regulations were promulgated to increase the number of minority and women employees in broadcast stations and to raise the level of their job responsibilities. Pressure has even been brought to bear to enhance station ownership opportunities for members of such groups. Yet there is little if any evidence that their accession to higher management levels or to ownership status concretely affects the basic operating purposes, management obligations or program characteristics of the stations. Repeatedly in all of these examples the reality of fundmental, predominant economic objectives of broadcasting remain— —to return an ever increasing profit to the stockholders and to enhance the capital value of the property. The reform voyage constantly founders on the shoals of this underlying economic imperative.

Conclusion

The record of reform in broadcasting thus remains mixed and uneven. Clearly there have been successes. Compared with its institutional status two decades before, the citizen group movement was much advanced by the early 1980s. It had become a major party in electronic communications regulatory and policy proceedings. With the assistance of the courts and the emergence of a broader social and political consciousness, it had succeeded in breaking open for access by many more interests the formerly closed process of regulatory exchange between industry and government. Several of the sources cited at the outset of this monograph have pointed to the long lists of the accomplishments by the reformers, some of which have been reiterated above. But what we have also seen here are the limits that have been placed on such efforts, and we have noticed how certain other more important countervailing policy developments have proceeded apace, absorbing much of the reform rhetoric and energy, yet reflecting little of the substantive change implied in the seriousness of the reform critique. It is beginning to appear that, having become a major actor in the policy drama, the reform institu-

tion has, like the regulatory apparatus before it, become captured by the theater's rules, with little hope of affecting the ending of the play.

One finds that the contemporary broadcasting reform movement is doubly a prisoner of its heritage. From the tradition of American progressivism it has inherited a continuing pattern of paradoxes represented in its yearning for a certain set of myths about the nature of the past, the possibilities of returning to it, and the role of the electronic media in effecting that return. It has also inherited certain contradictions and weaknesses in its essential purposes, its forms of organization and its approach to potential lines of action.

The progressive movement at the turn of the century never fully understood the nature of the earlier economic and political conditions, nor was it ever able to grasp the nature of the changes in the conditions taking place about it. Consequently its responses tended to move off in directions that were increasingly irrelevant to the growing complexity of commercial, governmental and social organization——into realms of moral exhortation, strong individualism, open commercial competition and small-town democratic images. These images still grip much of the current reform imagination. The goal remains largely restorative, to return through the new media and a resurgent free enterprise to a purer, simpler state of secular grace.

Meanwhile aspects of the earlier reform movement had become more institutionalized in the form of larger government and more apparently powerful regulatory counter-structures. Yet it turned out that the range of practical options was tightly circumscribed. The entire public administrative apparatus had been built in response to needs of the industries that were to be regulated. The public interest standard typical of such administrative law was adopted for the communications legislation. But that standard was defined at the outset in terms of broadcast industry needs, and the regulatory process itself came to work against the goals sought by the reformers.

The contemporary reform groups have been somewhat successful in cracking open the administrative structure, and at least up until 1980 they had even begun to infiltrate it. They had established certain rights in the regulatory process and they had, for a time, been able to place representatives in key policy agency positions. Yet in that engagement of the administrative apparatus they had also become parties, albeit perhaps unwillingly, to its prior purposes and functions. They had become consumed in the details of the process, leaving themselves with insufficient time and energy to examine either the assumptions underlying that process or the adequacy of their own goals. Moreover, the very fact of much of the reform activity tended to overstate the actual power of

the electronic media, investing in them more authority than might otherwise be warranted. In the end several of the leading reform organizations have continued to have funding difficulties, their relationships to the broader range of public interest group activity have alternately waxed hot and cold, and, whether deserved or not, doubts about their legitimacy have persisted, allowing them to suffer the irony of themselves now being labeled "special interest groups" in the pages of industry publications. [2] They had even begun to find the field of "reform" being invaded by other groups, for instance, Accuracy in Media (AIM) and the Coalition for Better Television (CBTV), whose political perspectives and policy agendas were decidedly more conservative than those of the traditional liberal citizen action groups.

In this light it is easier to comprehend what has happened in recent regulatory and policy developments, including the "rewrite." The reform movement does have a somewhat clearer idea than its forebearers of the power of the immediate forces with which it is dealing. But like its predecessors it is dwelling in certain images and structures that actually permit it relatively little maneuvering room. It has been outstripped by important technological developments, the scramble of industrial realignments, a bewildering flurry of government activity, and major political shifts in the country at large. It has permitted itself to be drawn into defense of, first, a cumbersome, often senseless regulatory process and, then, in reaction, an older economic ideology that ultimately militates against the social purposes it espouses.

As in the experience of their predecessors, the reformers have generated no clear, broadbased national constituency nor any form of organization consistently capable of helping translate their criticisms into comprehensive political action. They remain confused about their fundamental purposes, failing to articulate a set of goals that would offer any real promise of taking broadcasting and telecommunications beyond traditional patterns of control and service. Much of the significance of the broadcast reform movement rests in its reflection of the essentially ritualistic dimension of the regulatory and policymaking process and in the frequent service of its activities as a legitimization or ratification of prior governmental and industrial views and structural arrangements. At most the reform movement has succeeded to date in nudging the policymaking and regulatory process only a degree or two off course.

NOTES

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10. Henry S. Commager, ed., *Selections from the Federalist* (New York: Appleton-Century-Crofts, 1949), p. xi.
11. See for instance Roland H. Bainton, *The Reformation of the Sixteenth Century* (Boston: Beacon Press, 1959), pp. 4-5, and Charles Beard, *The Reformation of the Sixteenth Century in its Relation to Modern Thought and Knowledge* (London: Willows and Norgate, 1907), pp. 112-146.
12. Richard Hofstadter, *The Age of Reform* (New York: Alfred A. Knopf, 1954) and Noble, *op. cit.*
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15. *Ibid.*, pp. 133-134.
16. Noble, *op. cit.*, pp. v-viii.
17. Hofstadter, *op. cit.*, p. 7.
18. Robert Wiebe, *The Search for Order, 1877-1920* (New York: Hill and Wang, 1967), pp. 222-223
19. Alfred D. Chandler, Jr., "The Origins of Progressive Leadership," in Elting E. Morison, *et al.*, eds., *The Letters of Theodore Roosevelt* (Cambridge: Harvard University Press, 1954), Vol. 8, p. 1465.
20. Bernard Schwartz, ed., *The Economic Regulation of Business and Industry* (New York: Chelsea House, 1973), Volume I, and Leon L. Salomon, ed., *The Independent Regulatory Agencies* (New York: H.W. Wilson, 1959).
21. Arthur M. Schlesinger, Jr., *The Crisis of the Old Order, 1919-1933* (Boston: Houghton Mifflin, 1957), p. 246.
22. John Chamberlin, *Farewell to Reform*, Second Edition (New York: John Day, 1933), p. vii.
23. Eric Barnouw, *A Tower in Babel* (New York: Oxford University Press, 1966), p. 199.
24. Not only as in the license renewal cases cited here, but also as in action on various other policies and rules. See, for instance, Justice White's opinion for the Supreme Court in the Red Lion case, particularly the view reflected in the sentence: "It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." *Red Lion Broadcasting Co. et al. v. FCC*, 395 U.S. 367, 390 (1969).
25. Federal Communications Commission, *Public Service Responsibility of Broadcast Licensees*, March 7, 1946.
26. U.S. House, Committee on Interstate and Foreign Commerce, Special Subcommittee on Legislative Oversight, Regulation of Broadcasting, Report, (85, 2), November, 1958.
27. Federal Communications Commission, *Report and Statement of Policy re: Commission en banc Programming Inquiry*, July 29, 1960, 44 FCC 2303.
28. Federal Communications Commission, *Primer on Ascertainment of Community Problems by Broadcast Applicants*, March 3, 1971, 36 Fed. Reg. 4092.
29. Federal Communications Commission, *Policy Statement on Comparative Broadcast Hearings*, July, 1965, 1 FCC 2d 393.
30. Krasnow, *et al.*, *op. cit.*, pp. 207-208.
31. Guimary, *op. cit.*, pp. 19-34.

32. Fred W. Friendly, *The Good Guys, The Bad Guys and the First Amendment* (New York: Vintage Books, 1977), pp. 89-102; Barry Cole and Mal Oettinger, *Reluctant Regulators* (Reading, Mass.: Addison-Wesley, 1978), pp. 65-66; Grundfest, op. cit, pp. 35-37.

33. Murphy, *op. cit.*, pp. 35-61.

34. Friendly, *op. cit.*, p. 98.

35. Late in 1979 the FCC granted the license, formerly held by Lamar Life to TV-3, Inc., composed of four out of the five parties who since 1969 had been competing for the license. TV-3 is 51% controlled by local blacks. Its chairman, Aaron Henry, was one of the original intervenors with UCC. See *Broadcasting*, Dec. 10, 1979, p. 30.

36. Grundfest, *op. cit.*, p. 62.

37. Krasnow et al., *op. cit.*, p. 56 and Grundfest, *op. cit.*, pp. 39-47.

38. Federal Communications Commission, *Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants, Permittees and Licensees*, March 25, 1976, 41 Fed. Reg. 12424. See also, Willard D. Rowland, Jr., "Ascertainment and Research in Public Broadcasting," *Public Telecommunications Review*, November/December 1979, 7: 36-46.

39. Federal Communications Commission, *The Public and Broadcasting——A Procedure Manual*, Sept. 26, 1972, 37 FCC 2d 286; *Public and Broadcasting, Revised Edition——Procedure Manual*, Sept. 5, 1974, 39 Fed. Reg. 32288.

40. Federal Communications Commission, *In the Matter of Agreements Between Broadcast Licensees and the Public——Report and Order*, Dec. 19, 1975, 57 FCC 2d 42; and Grundfest, *op. cit.*, pp. vii-viii.

41. *Government in the Sunshine Act*, P.L. 94-409, 90 Stat. 1241 (1976); for information on the CAO, open meetings and EEO matters see Cole and Oettinger, op. cit., pp. 74-76, 78-79, 166-170.

42. See, *In re Applications of Alabama Citizens for Responsive Public Television, Inc. and Alabama Educational Television Commission*, July 12, 1978, 42 RR 2d 999.

43. *In re Applications of Alabama Citizens for Responsive Public Television, Inc. and Alabama Educational Television Commission*, Jan. 14, 1980, 46 RR 2d 1327.

44. For a fuller account of the WHDH case and the S. 2004 affair in the context of the comparative renewal policy debate see Krasnow et al., *op. cit.*, pp. 206-232.

45. Federal Communications Commission, *Policy Statement Concerning Comparative Hearings Involving Regular Renewal Applicants*, Jan. 15, 1970, 22 FCC 2d 424.

46. "Court Axes WESH-TV Renewal," *Television Digest*, Oct. 2, 1978, pp. 1-2.

47. See in *Broadcasting*, "In Brief," June 25, 1979, p. 30; "FCC will have another go at WESH-TV decision," March 16, 1981, pp. 54-55; and "Cowles wins again in Daytona Beach," June 22, 1981, pp. 24-25.

48. "FCC lifts three RKO licensees; 13 others are now in jeopardy," *Broadcasting*, Jan. 28, 1980, p. 27; "Appeals court upholds denial of RKOs's WNAC-TV," *Broadcasting*, Dec. 7, 1981, p. 37; "It's all over for RKO's WNAC-TV," *Broadcasting*, April 26, 1982, p. 27.

49. Grundfest, *op. cit., p. 56.*

50. Ibid., p. 152.

51. *Ibid.*, p. 174.

52. Cole and Oettinger, *op. cit.*, p. 239.

53. U.S. House, Committee on Commerce, Subcommittee on Communications, *Overview of the Office of Telecommunications Policy*, Hearing, (93, 1), Feb. 20, 1973, p. 8.

54. U.S. Senate, Committee on Commerce, Subcommittee on Communications, *Broadcast License Renewal Act*, Hearings, (93, 2,), June-July, 1974, Parts 1-2, p. 50.

55. U.S. Senate, Committee on Commerce, Subcommittee on Communications, *Overview of the Federal Communications Commission*, Hearing, (93, 1), Feb. 22, 1973, p. 86.

56. Krasnow, *et al., op. cit.*, pp. 219-220.

57. U.S. House, Committee on Interstate and Foreign Commerce, Subcommittee on Communications, *Office of Telecommunications Policy Overview*, Hearing, (94, 1), March 13, 1975, p. 8; and Federal Communications Commission, *The Comparative Renewal Process*, Report to the Subcommittee on Communications of the U.S. House, Sept. 20, 1976.

58. This was a stock transaction valued at $370 million, creating a new company owning 80 daily newspapers, seven television and 12 radio stations, and several other publishing, newsprint, advertising and communications interests, including Louis Harris and Associates. The arrangement did result in the spin-off of one television station for sale to a black broadcaster in Rochester, N.Y., the first minority controlled major-market network affiliate. See, "FCC clears biggest deal ever," *Broadcasting*, June 11, 1979, p. 19.

59. The Commission unanimously approved the purchase, valued at $560 million, in April, 1980, but a petition for reconsideration filed by Cox in May effectively terminated the merger. Subsequent filings by several other parties, including NCCB and other citizen groups would have at least delayed the merger and perhaps eventually prevented it, but the Cox withdrawal was sufficient for the moment. The merger proposal provided certain concessions to minority and other citizen group interests, including establishment of a foundation to train minorities and women and sale of some stations to black groups. But it turned out there were differences among the citizen groups about the deal which, had it been successful, would have led to control under G.E. not only of its vast electronics manufacturing enterprises, but also some 57 cable systems, 17 broadcast stations (after certain FCC-required spin-offs), 21 newspapers and many other publishing and communications interests. See, "Cox walks out of the Church," *Broadcasting*, June 2, 1980, p. 36.

60. The purchase value has been estimated at $646 million, combining Westinghouse's 17 broadcast licenses, its Group W Productions and a few small cable interests with Teleprompter's 100-plus cable systems and its holdings in Showtime (pay-cable programming), Filmation Associates, and Muzak. At the outset the combined company owned six television and 13 radio stations, over 118 cable systems (1.4 million subscribers) in 32 states, plus all the other holdings. See in *Broadcasting*, "The biggest deal yet," Oct. 20, 1980, pp. 19-20, "FCC OK's Westinghouse--Teleprompter," Aug. 3, 1981, pp. 29-30, "Westinghouse-TPT merger closed," Aug. 24, 1981, p. 21, and in *Television Digest*, "Teleprompter-Westinghouse Merger," Jan. 26, 1981, p. 12.

61. Cole and Oettinger, *op. cit.*, pp. 73-74, 76-78.

62. President's Task Force on Communications Policy, *Final Report* (Washington, D.C.: U.S. Government Printing Office, 1969).

63. John E. Burke, "The Public Broadcasting Act of 1967," *Educational Broadcasting Review*, April, June, August, 1972, 6: 2-4.

64. Sloan Commission on Cable Communications, *On the Cable* (New York: McGraw Hill, 1971); The Conference Board, *Information Technology: Some Critical Implications for Decision Makers*, Report No. 537 (New York: The Conference Board, 1972); Committee for Economic Development, Subcommittee on the Economic and Social Impact of the New Broadcast Media, *Broadcasting and Cable Television: Policies for Diversity and Change*, (New York: Committee for Economic Development, 1975); Cabinet Committee on Cable Communications, *Cable: Report to the President*, (Washington, D.C.: U.S. Government Printing Office, 1974); plus numerous titles published by Aspen and Rand.

65. Schlesinger coined the term in his book of the same name, Arthur M. Schlesinger, Jr., *The Imperial Presidency* (Boston: Houghton Mifflin, 1973). For the story of the use of that power during the late 1960s and early 1970s, see William E. Porter, *Assault on the Media: The Nixon Years* (Ann Arbor: University of Michigan Press, 1976).

66. Krasnow, *et al.*, *op. cit.*, p. 71, and Benno C. Schmidt, Jr., *Freedom of the Press vs. Public Access* (New York: Praeger, 1976), pp. 204-205.

67. The agreement has never worked particularly well. It was challenged by a group of independent producers and writers including Norman Lear and the Writers Guild of America, but is now back before the FCC for reconsideration as the result of an order by the Ninth Circuit Court of Appeals. For details of the development of the "family hour" see Geoffrey Cowan, *See No Evil* (New York: Simon and Schuster, 1979); for the more recent events see Jim Harwood, "Family viewing still on its way back to the FCC," *Variety*, Feb. 11, 1980, p. 108, and "Family viewing case easing out of the picture," *Broadcasting*, Oct. 13, 1980, p. 66.

68. U.S. House, Subcommittee on Communications, *Cable Television: Promise versus Regulatory Performance*, Staff Report, 94, 2), January, 1976; *Cable Television Regulation*

Oversight, Hearings, (94, 2), Parts 1-2, May-September, 1976; *Options Papers*, Staff Report, (95, 1), May, 1977; "Communications Act of 1978," H.R. 13015, (95, 2), June 7, 1978; and "Communications Act of 1979," H.R. 3333, (96, 1), March 29, 1979.

69. U.S. Senate, Subcommittee on Communications, *Cable Television*, Hearings, (95, 1), June 6-8, 1977; "Communications Act Amendments of 1979," S. 611, (96, 1), March 12, 1979; "Telecommunications Competition and Deregulation Act of 1979," S. 622, (96, 1), March 12, 1979; and an extensive set of hearings on those bills, *Amendments to the Communications Act of 1934*, Hearings, Parts 1-4, (96, 1), April-June, 1979. S. 611 had a few broadcasting provisions, including indefinite radio and five-year television license renewals. S. 622 had even broader deregulatory provisions for broadcasting and cable.

70. In an effort to reach at least some accommodation with the Senate the revised House measure had no broadcasting provisions. See, U.S. House, Subcommittee on Communications, "Telecommunications Act of 1979," H.R. 6121, (96, 1), Dec. 13, 1979. It was reintroduced in January, 1980 as the "Telecommunications Act of 1980." Meanwhile the Senate Subcommittee began consideration of a revised bill that now contained broadcasting sections. That bill (S. 2827) was introduced by Chairman Hollings in June 1980 and had as cosponsors Senators Cannon, Goldwater, Packwood, Schmitt and Stevens. It provided five-year renewals for radio and television licensees, no spectrum fee and a number of other broadcasting and cable deregulatory measures, many similar to those in the old S. 622. See "Rewrite bill emerges in the Senate," *Broadcasting*, June 16, 1980, p. 27.

71. H.R. 13015 (1978), *op. cit.*

72. H.R. 3333 (1979), *op. cit.*

73. "Tuesday's massacre on Capitol Hill: Democrats out in Senate, Van Deerlin out on House side," *Broadcasting*, Nov. 10, 1980, p. 30.

74. "Reagan on the Record," *Broadcasting*, Nov. 10, 1980, p. 27.

75. "Goldwater Plans Massive Changes," *Television Digest*, Dec. 15, 1980, pp. 2-3.

76. The "Omnibus Budget Reconciliation Act of 1981," P.L. 97-35, September, 1981.

77. In *Broadcasting* see, "Deregulation bill passes Senate," April 5, 1982, pp. 36-37, "Communications bills mashed together by Congress," and "In Brief," Aug. 23, 1982, pp. 36-37, 80-81.

78. A more complete overview of federal legislative and policy developments in broadcasting cable and telecommunications appears in Willard D. Rowland, Jr., "The Process of Reification: Recent Trends in Communications Legislation and Policy-Making," *Journal of Communication*, 32: 114-136 (Autumn 1982).

79. Among the principal published studies: Don R. LeDuc, *Cable Television and the FCC: A Crisis in Media Control* (Philadelphia: Temple University Press, 1973); a series of reports for Rand by Rolla Edward Park and others (1970-1973); and Martin H. Seiden, *Cable Television U.S.A.: An Analysis of Government Policy* (New York: Praeger, 1973).

80. Federal Communications Commission, *Cable Television Report and Order*, 36 FCC 2d 143 (1972).

81. *FCC v. Midwest Video Corp. et al.*, 45 RR 2d 581 (1979).

82. See in *Broadcasting*, "FCC now all but out of cable business," July 28, 1980, pp. 25-27, and "Where Things Stand," July 12, 1982, pp. 25-26.

83. On the ownership rules see Federal Communications Commission, *Report and Order in Docket No. 18891*, FCC 82-322, 47 Fed. Reg. 39207 (1982), and on the cable bill see in *Broadcasting*, "Goldwater presents revised version of cable bill," July 12, 1982, pp. 48-49, and "Cable troops fight for S. 2172," Sept. 20, 1982, pp. 54-55.

84. See, for example, "Cable: Good-bye to Mom and Pop," *Broadcasting*, Jan. 21, 1980, p. 55.

85. That is, cable systems are not constructed to permit subscribers to "call up" one another. Not even Warner's much-publicized Qube system in Columbus, Ohio, is so designed.

86. *Staff Report*, 1976, op. cit., p. 2.

87. *Ibid.*, p. 3.

88. Chuck Jackson, "Policy Options for the Spectrum Resource," *Options Papers*, *op. cit.*, pp. 1-33.

89. See its *Carterphone* decision, 13 FCC 2d 420 (1968), *First Computer Inquiry*, 28 FCC 2d 267 (1971), and *Second Computer Inquiry*, 77 FCC 2d 384 (1980).

90. See in *Broadcasting*, "Freeing AT&T for 'information age'," Jan. 11, 1982, p. 27; "After the breakup, the breaking away," Jan. 18, 1982, pp. 30-32; ;and "AT&T justice near accord with Greene," Aug. 23, 1982, p. 56.

91. U.S. Congress, *Public Telecommunications Financing Act of 1978*, P.L. 95-567 (95, 2), Nov. 2, 1978.

92. See, U.S. Congress, *Public Broadcasting Financing Act of 1975*, P.L. 94-192 (94, 1), Dec. 31, 1975. That legislation provided for a system of advance, multi-year federal funding on the basis of a match with the amount of non-federal money raised by the entire public broadcasting community. That principle was reiterated and extended in the 1978 Act, but other terms of that law and various congressional and White House failures to honor its funding terms have undermined much of the potential for insulation and economic growth contemplated in the 1975 Act. Under the 1978 Act authorizations for the Corporation for Public Broadcasting were to rise to $200 million and $220 million for 1982 and 1983 respectively. The Carter administration's actual appropriations reached a peak of only $172 million in 1982. Appropriations at the same level for 1983 were rescinded by the Reagan administration and cut to $137 million. Under the 1981 *Budget Reconciliation Act (op. cit.)*, CPB funding was extended through 1985. But the authorizations were to be no more than $130 million each year, and the administration had made it clear that it would prefer additional cuts in those appropriations.

93. For a more thorough analysis of the recent federal policy environment for public broadcasting see Willard D. Rowland, Jr., "The Struggle for Self-Determination: Public Broadcasting, Policy Problems and Reform," in Jorge R. Schement, Felix Gutierrez, and Marvin A. Sirbu, Jr., eds., *Telecommunications Policy Handbook* (New York: Praeger, 1982).

94. The final blow came in 1981, after the Reagan administration had made a number of key changes at the FTC. However, even before the 1980 elections it had become clear that Congress would continue to use the FTC's funding legislation to impose restrictions, if not an outright ban, on the children's inquiry. See, Robert Sherrill, "Jousting on the Hill: Skewering the Consumer's Defender," *Saturday Review*, March 29, 1980, p. 18, and "House and Senate conferees agree on FTC legislation," *Broadcasting*, April 28, 1980, p. 25.

95. "ACT files suit against FCC," *Broadcasting*, May 24, 1982, pp. 48-49.

96. By mid-1982 it appeared that NCCB, one of the senior reform groups, was on the verge of bankruptcy. See, "In Brief," *Broadcasting*, July 12, 1982, p. 96.